

AMENDED IN SENATE APRIL 13, 2009

SENATE BILL

No. 229

Introduced by Senator Pavley

February 23, 2009

An act to add Division 28 (commencing with Section 80500) to, and to repeal and add Article 2 (commencing with Section 150) of Chapter 2 of Division 1 of, the Water Code, relating to the Sacramento-San Joaquin Delta.

LEGISLATIVE COUNSEL'S DIGEST

SB 229, as amended, Pavley. California Water Commission: Bay-Delta.

(1) Existing law establishes the 9-member California Water Commission in the Department of Water Resources and requires the commission to conduct an annual review of the progress and operation of the State Water Project and to carry out various other related functions.

This bill would ~~substantially~~ revise the membership and functions of the commission. The bill would establish the commission in the Natural Resources Agency and ~~require that it be considered as~~ an independent commission. The commission would consist of 5 members appointed by the Governor and subject to the confirmation of the Senate. The commission would have primary authority to implement and *approve and* oversee the implementation of the Bay-Delta Interim Governance Act of 2009, as described in (2). The bill would ~~authorize~~ *require* the commission to serve as lead agency to implement ~~specified~~ projects recommended by the final environmental impact report of the Bay-Delta Conservation Plan, *or delegate these responsibilities to other appropriate state or local entities.*

(2) Existing law requires various state agencies to carry out programs, projects, and activities on behalf of the Sacramento-San Joaquin Delta.

The California Bay-Delta Authority Act establishes in the Natural Resources Agency the California Bay-Delta Authority. The act requires the authority and the implementing agencies to carry out programs, projects, and activities necessary to implement the Bay-Delta Program, defined to mean those projects, programs, commitments, and other actions that address the goals and objectives of the CALFED Bay-Delta Programmatic Record of Decision, dated August 28, 2000, or as it may be amended.

This bill would enact the Bay-Delta Interim Governance Act of 2009 to provide for interim management and governance measures for the Bay-Delta, as defined, and to enhance the reliability of water supplies that originate in the Bay-Delta. The act would require the agency to adopt a Bay-Delta Conservation Plan for the Bay-Delta. The development and implementation of the plan would be funded through a fee established by the commission and paid by all entities that are beneficiaries, as defined, of the plan and those entities that divert water from a ~~Delta~~ Bay-Delta water body. The act would require the State Board of Equalization to collect the fee and deposit the moneys collected in the Delta Governance Account, which the bill would establish. Moneys in the account would be available, upon appropriation by the Legislature, only for expenditure on projects or programs contained in the plan.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Article 2 (commencing with Section 150) of
2 Chapter 2 of Division 1 of the Water Code is repealed.

3 SEC. 2. Article 2 (commencing with Section 150) is added to
4 Chapter 2 of Division 1 of the Water Code, to read:

5
6 Article 2. California Water Commission
7

8 150. There is in the Natural Resources Agency the California
9 Water Commission, ~~is~~ an independent commission. In addition to
10 its duties and responsibilities contained herein the commission

1 shall focus on interim measures in the Bay-Delta as described in
2 this article.

3 151. ~~The California Water Commission~~ *commission* consists
4 of five members appointed by the Governor and subject to the
5 confirmation of the Senate, as provided in this article.

6 152. The Governor shall select and approve members for
7 appointment on the basis of their general educational and business
8 qualifications, and their knowledge of, interest in, and experience
9 with problems relating to the control, storage, and beneficial use
10 of water. The membership shall ~~represent~~ *be appointed from* all
11 parts of the state so far as it is practicable. *Members shall represent*
12 *the public interest.*

13 153. The Governor shall appoint the initial five members of
14 ~~the California Water Commission~~ *commission* before January 15,
15 2010. The members shall serve staggered terms. The terms of the
16 members of the ~~California Water Commission~~ *commission* shall
17 expire as follows: one member on January 15, 2011, two members
18 on January 15, 2012, and two members on January 15, 2013. The
19 members of the commission shall allocate the initial terms among
20 themselves by lot or other method.

21 154. Appointments shall be for terms of four years. Vacancies
22 shall be immediately filled by the Governor for the unexpired
23 portion of the terms in which they occur.

24 155. The appointments made by the Governor to membership
25 on the ~~California Water Commission~~ *commission* are subject to
26 confirmation by the Senate at the next regular or special session
27 of the Legislature and the refusal or failure of the Senate to confirm
28 an appointment shall create a vacancy in the office to which the
29 appointment was made *for which the Governor shall nominate a*
30 *new member to fill the vacancy.*

31 156. The members of the ~~California Water Commission~~
32 *commission* may be removed from office by the Legislature, by
33 concurrent resolution adopted by a majority vote of all members
34 elected to each house, for dereliction of duty, corruption, or
35 incompetency.

36 157. Each member of the ~~California Water Commission~~
37 *commission* shall receive one hundred dollars (\$100) for each day
38 during which the member is engaged in the performance of official
39 duties, but shall not be compensated for more than 40 days in any
40 one fiscal year, except that the chairperson of the commission may

1 be compensated for up to 60 days for performance of those duties.
2 In addition to that compensation, each member shall be reimbursed
3 for necessary traveling and other expenses incurred in the
4 performance of official duties.

5 158. The ~~California Water Commission~~ *commission* shall
6 maintain its headquarters in Sacramento and shall hold meetings
7 at ~~such any~~ *any* times and at ~~such any~~ *any* places as shall be determined
8 by it. All meetings of the commission shall be open and public.

9 159. Special meetings may be called at any time by the chair
10 of the commission or by the executive officer at the request of any
11 four members, upon notice specifying the matters to be acted upon
12 at that meeting, but no other matters shall be acted upon at special
13 meetings that were not so noticed, unless all members are present
14 and consent thereto.

15 160. The members of the ~~California Water Commission~~
16 *commission* shall select one of the members to serve as chair, who
17 shall hold office as chair at the pleasure of the commission.

18 161. The ~~California Water Commission~~ *commission* shall confer
19 with, advise, and make recommendations to the director with
20 respect to any matters and subjects under the jurisdiction of the
21 director. All rules and regulations of the department, other than
22 those relating exclusively to the internal administration and
23 management of the department, shall be first presented by the
24 director to the commission and shall become effective only upon
25 approval by the commission.

26 162. The ~~California Water Commission~~ *commission* shall have
27 the power to name all facilities of the State Water Resources
28 Development System owned by the state. The commission may
29 receive testimony from the public on matters involving its
30 responsibilities under this section, and, after public hearing for the
31 purpose of considering all proposed names for those facilities,
32 may, by resolution, express its decision regarding the naming of
33 specific facilities of the State Water Resources Development
34 System.

35 163. (a) The commission shall have primary authority to
36 implement and *approve and* oversee the implementation of the
37 Bay-Delta Interim Governance Act of 2009 (Division 28
38 (commencing with Section ~~80500~~ 80500)), including, but not
39 limited to, the responsibility to ensure that the coequal goals for
40 the governance of the Delta identified in that division are

1 successfully coordinated and implemented, the ~~implementation of~~
2 *responsibility to implement* the Bay-Delta Conservation Plan, *and*
3 *the interim plan described in Section 80534*, adopted pursuant to
4 that act, and the responsibility to recommend priority activities
5 and projects to the Natural Resources Agency, the state board, and
6 other entities for environmental review and implementation that
7 are included within the Bay-Delta Conservation Plan *or the interim*
8 *plan described in Section 80534*.

9 (b) The commission ~~may~~ *shall* serve as lead agency to
10 implement ~~specified~~ projects recommended by the final
11 environmental impact report of the Bay-Delta Conservation Plan
12 *or the interim plan described in Section 80534*. The commission
13 may enter into agreements with appropriate state agencies to
14 provide technical assistance that may be necessary to implement
15 specific projects. *The commission may delegate lead agency status*
16 *for projects in the Bay-Delta Conservation Plan or the interim*
17 *plan described in Section 80534 to other appropriate state or local*
18 *entities*.

19 (c) Establish a Delta fee in accordance with Section 80535.

20 (d) The commission shall recommend at least one individual to
21 serve as a watermaster who shall be charged with the responsibility
22 of enforcing all statutory provisions that are relevant to the
23 successful implementation of the Bay-Delta Conservation Plan *or*
24 *the interim plan described in Section 80534*. The costs of the
25 watermaster shall be paid from the Delta Governance Account
26 established pursuant to Section 80535. *The watermaster shall*
27 *notify the commission of any action of the Natural Resources*
28 *Agency or the state board or any other governmental entity that*
29 *is inconsistent with this article*.

30 (e) Watermaster decisions may be appealed by an affected party
31 to the chair of the state board. The chair may stay decisions if he
32 or she determines that the decision of the watermaster was not
33 supported by substantial evidence in the record. An order of the
34 chair of the state board pursuant to this subdivision that stays an
35 order of the watermaster shall be set for hearing before the full
36 state board at the earliest possible meeting.

37 164. The commission may employ an executive officer, exempt
38 from civil service, under subdivision (e) of Section 4 of Article
39 XXIV of the Constitution, and other staff it determines to be
40 necessary for the proper discharge of its duties and may purchase

1 or rent necessary supplies, instruments, tools, equipment, and
2 conveniences.

3 165. ~~The department~~ *Natural Resources Agency* shall furnish
4 to the ~~California Water Commission~~ *commission*, at its request,
5 assistance, including technical, legal, and clerical services, as is
6 required to the extent funds are made available therefor.

7 166. (a) The commission may hold any hearings and conduct
8 any investigations in any part of the state necessary to carry out
9 the powers vested in it, and for those purposes has the powers
10 conferred upon heads of departments of the state by Article 2
11 (commencing with Section 11180) of Chapter 2 of Part 1 of
12 Division 3 of Title 2 of the Government Code.

13 (b) Any hearing or investigation by the commission may be
14 conducted by any member or nominee upon authorization of the
15 commission, and he or she shall have the powers granted to the
16 commission by this section, but any final action of the commission
17 shall be taken by a majority of the members of the commission at
18 a meeting duly called and held.

19 167. ~~The California Water Commission~~ *commission* shall
20 conduct an annual review of the progress of construction and
21 operation of the State Water Resources Development System, and
22 shall make a report on its findings to the department and to the
23 Legislature, together with whatever recommendations it deems
24 appropriate.

25 168. ~~The California Water Commission~~ *commission* shall hold
26 public hearings on all additional facilities proposed to be added to
27 the State Water Resources Development System by the department
28 pursuant to the authority granted by Sections 12931 and 12938.

29 SEC. 3. Division 28 (commencing with Section 80500) is added
30 to the Water Code, to read:

31
32 DIVISION 28. BAY-DELTA INTERIM GOVERNANCE

33
34 CHAPTER 1. GENERAL PROVISIONS

35
36 80500. This division shall be known and may be cited as the
37 Bay-Delta Interim Governance Act of 2009.

38 80501. (a) It is the intent of the Legislature to provide for
39 interim management and governance measures that will contribute
40 to the health of the Bay-Delta and to enhance water supply

1 reliability to those who depend on adequate water supplies that
2 originate in the Bay-Delta.

3 (b) It is further the intent of the Legislature to accomplish the
4 identified tasks through the use of existing government agencies
5 and not to create additional entities.

6 (c) It is further the intent of the Legislature that federal, state,
7 and local governments should cooperate in devising the necessary
8 projects, programs, water supply reliability improvements, and
9 ecosystem recovery strategies in the ~~Delta~~ Bay-Delta.

10
11 CHAPTER 2. DEFINITIONS
12

13 80510. Unless the context otherwise requires, the definitions
14 set forth in this chapter govern the construction of this division.

15 80511. "Account" means the Delta Governance Account
16 established in Section 80535.

17 80512. "Agency" means the Natural Resources Agency.

18 80513. "*Bay-Delta*" means the *Sacramento-San Joaquin Delta*
19 *Estuary, as defined in Section 12220, and Suisun Bay.*

20 ~~80513.~~

21 80514. "Commission" means the California Water Commission.

22 ~~80514. "Delta" means the Sacramento-San Joaquin Delta~~
23 ~~estuary, as defined in Section 12220 and Suisun Bay.~~

24 80515. "Plan" means the Bay-Delta Conservation Plan adopted
25 pursuant to Chapter 3 (commencing with Section 80530).

26
27 CHAPTER 3. BAY-DELTA OPERATION
28

29 80530. (a) It is the policy of the state that, to the maximum
30 extent practicable, projects and programs of state agencies that
31 affect the Bay-Delta shall achieve the two coequal goals of
32 ecosystem recovery and improvements to the reliability of public
33 water supplies.

34 (b) The agency, ~~in consultation with the state board,~~ shall
35 undertake all necessary actions to ensure that all funds and
36 programs of the State of California and its cooperating partners in
37 the federal government and local governments in the Bay-Delta
38 are consistent with the goals established in subdivision (a). *The*
39 *agency may consult with the state board in implementing this*
40 *subdivision.*

1 80531. (a) The agency shall adopt a Bay-Delta Conservation
2 Plan for the Bay-Delta. The plan shall incorporate adaptive
3 management techniques to the maximum extent practicable in
4 order to focus the best available scientific information on the two
5 coequal goals established in subdivision (a) of Section 80530.

6 (b) The agency shall act as the lead agency in the development
7 of the plan. The plan shall be consistent with the Natural
8 Community Conservation Planning Act (Chapter 10 (commencing
9 with Section 2800) of Division 10 of the Fish and Game Code).
10 The Secretary for Natural Resources shall extend an invitation to
11 appropriate federal agencies and local governments inviting their
12 participation and entering into agreements consistent with this
13 section at the earliest possible time.

14 80532. The Secretary for Natural Resources shall extend an
15 invitation to cooperating federal agencies and local governments
16 to participate in the interim governance of the Bay-Delta pursuant
17 to this division.

18 80533. The plan and its component projects shall ~~fully~~ comply
19 with the California Environmental Quality Act (Division 13
20 (commencing with Section 21000) of the Public Resources Code).
21 It is the intent of the Legislature that the agency shall, to the extent
22 feasible, coordinate with local governments that are developing
23 natural community conservation plans adjacent to the ~~Delta~~
24 *Bay-Delta*.

25 80534. The Legislature finds and declares that, in addition to
26 the development and implementation of the plan, other interim
27 measures not included in the plan should be addressed in the short
28 term, including, but not limited to, issues pertaining to
29 transportation, utilities, recreation, water supply, ~~flood control,~~
30 ~~and others~~ *and flood control*. The parties identified in Section
31 12805.4 of the Government Code shall develop an interim plan
32 that includes recommendations for projects and programs to address
33 these issues that can be implemented as interim measures.

34 80535. (a) The development and implementation of the plan
35 shall be funded through a fee paid by all entities that are
36 beneficiaries of the plan and those entities that divert water from
37 a ~~Delta~~ *Bay-Delta* water body. For purposes of this section, plan
38 “beneficiaries” are those entities that obtain or are delegated
39 authority, pursuant to the plan or its implementing agreements, to

1 take endangered, threatened, or candidate species protected under
2 state or federal law.

3 (b) The commission shall establish the fee, in consultation with
4 the agency and the state board, sufficient to fund the development
5 and implementation of the plan. The fee may be graduated to reflect
6 factors recognized by the commission that may include, but are
7 not limited to, the volume of water diverted, the nature and type
8 of the diversion, and other factors as determined by the
9 commission. The State Board of Equalization shall collect the fee
10 and deposit the moneys collected in the Delta Governance Account,
11 which is hereby established within the State Treasury. The moneys
12 in the account shall be available, upon appropriation by the
13 Legislature, only for expenditure on projects or programs contained
14 in the plan.

15 80536. Plan projects may be funded, if authorized, by moneys
16 made available by bond acts approved before January 1, 2010,
17 upon appropriation by the Legislature for that purpose. It is the
18 intent of the Legislature that plan projects may also be funded from
19 other general obligation bonds approved by a vote of the people
20 and revenue bonds.